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CHARLES ELMORE CRO

No. 525

In the Supreme Court of the United States

OCTOBER TERM, 1935

GREAT WESTERN POWER COMPANY OF CALIFORNIA,
PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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MEMORANDUM FOR THE RESPONDENT

QUESTION PRESENTED

Where a corporation exchanges its B bonds and cash for its G bonds, under the terms of the G bonds, can it deduct the unamortized discount on the G bonds and the premium and expense incident to the exchange, in the year of such substitution, or must it amortize the same over the remaining life of its B bonds?

DISCUSSION

We do not oppose the granting of a writ of certiorari in this case. Petitioner, during the year 1921, pursuant to the provisions of its General Lien Indenture, issued and sold $2,500,000 face value of its General Lien 8 percent Gold Bonds dated February 1, 1921, and due February 1, 1936. These bonds, which will hereinafter be referred to as the "General Lien 8's," were sold at a discount of $150,000 and the expense of issuance was $22,283.54. The General Lien 8's were convertible under certain circumstances into Series B 7's (R. 64–65). Under the terms of the General Lien Indenture the holders of any and all General Lien 8's called for redemption had the option either of receiving payment in cash (5 percent above par) or of exchanging such bonds for Series B bonds of the company, par for par, and a 5 percent cash premium (R. 167–168).

The Series B 7's, dated August 1, 1920, and due August 1, 1950, were issued in the year 1921 (R. 66). Said Series B 7's were issued to a face value of $8,500,000 and were disposed of as follows: $2,500,000 delivered to the trustees under the General Lien Indenture and held by them as additional security for the General Lien 8's; $1,000,000 sold to the public in 1921 for cash at a discount of $100,000; and $5,000,000 delivered to trustees as additional security for another issue of bonds not here involved. The expense of issuing the entire Series B was $49,548.14 (R. 67).

On August 1, 1924, pursuant to a resolution adopted by the petitioner's board of directors on May 8, 1924, the holders of $2,354,500 face value of the General Lien 8's exchanged them for a like amount of Series B 7's and received, in addition to the Series B bonds, a cash premium. Such exchange was made in accordance with the provisions of the option granted by the General Lien Indenture (R. 112–113). The petitioner contends that the full amount of the premium, discount and expense incident to issue and exchange of these bonds is allowable as a deduction for the year 1924, whereas the Commissioner determined that such amount should be amortized over the life of the Series B 7's which were exchanged for the General Lien 8's (R. 66).

The premium, unamortized discount and expense of the balance of the General Lien 8's which were retired for cash have been conceded to be allowable deductions for the year 1924 (R. 66).

The court below held that the exchange of bonds was a mere substitution of the evidences of the same indebtedness, and, therefore, the petitioner had not realized the loss which it claimed (R. 223–227).

We submit that the court below applied the proper principles of law and reached a correct result. But in view of the fact that the decision of the Circuit Court of Appeals for the Ninth Circuit in *San Joaquin Light & Power Corp.* v. *McLaughlin*, 65 F. (2d) 677, is in direct conflict with

the decision of the court below, we do not oppose the petition.[1]

Respectfully submitted.

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[1] It should be noted that the *San Joaquin* case involved both bonds retired for cash and bonds exchanged, while the question here is limited to the bonds exchanged.

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